



City of Albuquerque

Legislative File Number O-05-124 (version 1)

CITY of ALBUQUERQUE SIXTEENTH COUNCIL

Amending The Albuquerque Abandoned Vehicle And Inoperable Vehicle Ordinance To Clarify The Definitions Of Driveway And Abandoned Vehicles; Amending Section 8-5-2-1, ROA 1994; Amending Section 8-5-2-3, ROA 1994.

CITY of ALBUQUERQUE SIXTEENTH COUNCIL

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. Amending Section 8-5-2-1, ROA 1994 to read as follows:

“DEFINITIONS.

For the purpose of §§ 8-5-2-1 et seq., the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CHIEF. The Chief of Police of the Albuquerque Police Department or his designated representative.

DRIVEWAY. Any concrete, asphalt [~~or~~+] aggregate-paved [~~or dirt~~] path used primarily for vehicles, leading from a street or road to a garage or house. [~~+~~ No greater than 50% of the front yard of a private residence shall be utilized as a driveway for parking vehicles. +]

IMPOUND. The towing and/or storage of a vehicle by a wrecker service as authorized by the city or other transport of a vehicle by the Police Department for temporary storage pursuant to the execution of lawful police purposes.

IMPOUNDMENT CHARGES. Impoundment charges shall include costs for both towing and storage of the abandoned and/or inoperable vehicle and administrative impound fees which shall be paid in the amount of either: (1) the reasonable expenses

to the city, including without limitation, the costs of the search of owners and lien holders, mailing, service of notice, appraisal, publication of notice, sale, including advertising, and any other fees or penalties, including without limitation, those on account of parking violations pursuant to ordinance; or (2) \$50, whichever is greater.

INOPERABLE VEHICLE. Any vehicle which, for a period of at least three consecutive days, the engine, wheels, tires or other parts have been removed or on which the engine, wheels, tires, or other parts have been altered, damaged or otherwise so treated that the vehicle is incapable of being driven under its own motor power. A vehicle that is not registered or does not display a current valid license plate and validating sticker shall be deemed inoperable. Inoperable vehicle shall include any parts of a vehicle located separately from a vehicle. A vehicle shall be deemed inoperable when it has one or more flat tires or has one or more missing windshield or window, or has one or more windshield or window broken to the extent that visibility is limited so as to make driving such vehicle unsafe. An INOPERABLE VEHICLE does not include any motor vehicle that is kept within a building when not in use, nor a vehicle on the premises of a business enterprise operated in a lawful place and manner when necessary to the operation of such business enterprise. An inoperable vehicle does not include a vehicle for which a temporary sticker has been issued pursuant to § 8-5-2-3 (B).

LACK OF MOVEMENT. Proof that the vehicle's odometer shows movement of no more than 2/10ths of a mile during any specified period of time shall constitute prima facie evidence that the vehicle was left in one place.

MAYOR. The Mayor of the city or his designated representative.

OWNER. The registered owner or owners of a vehicle as recorded with the New Mexico Department of Motor Vehicles or similar agency of a state outside New Mexico. Where written notice to the owner is required by §§ 8-5-2-1 et seq., such notice shall be given to each registered owner. Where appearance of the owner is required by §§ 8-5-2-1 et seq., appearance may be by a person authorized in writing by the owner to appear on his behalf.

PUBLIC PROPERTY. Any real property owned by any governmental entity within the municipal limits of the city, including but not limited to, the public way, right-of-way,

roads, streets and alleys.

VALIDATING STICKER. A tab or sticker or similar identification affixed to the vehicle, or to the license plate issued to that vehicle, which was issued by the state in which the vehicle is registered for the purpose of showing that the vehicle registration has been renewed and is current. A validating sticker for vehicles registered in New Mexico shall include a sticker defined in § 66-1-4.19 NMSA 1978.

VEHICLE. Any device, in, upon, or by which any person or property is or may be transported or drawn upon a street or highway, propelled by a power other than human power, designed to travel along the ground by use of wheels, treads, runners, or slides, and shall include without limitations, automobiles, trucks, trailers, motorcycles, tractors, buggies and wagon. VEHICLE includes all devices regardless of the type of power, including but not limited to, electric power and any type of gas or gasoline power or any combination thereof and any connected trailer or semi-trailer.

WRITTEN NOTICE. Notice sent by mail, to the owner's address as provided by State Motor Vehicle Division files except as provided herein:

(1) When such notice is required under the terms of §§ 8-5-2-1 et seq., weekends and holidays shall not be included when calculating the time for mailing notice unless provided otherwise in § 8-5-2-1 et seq.

(2) When a vehicle is registered in a state outside New Mexico, the Mayor or the Chief shall make all reasonable and diligent efforts to ascertain from the appropriate motor vehicle regulatory agency the name and address of all registered owners. If the name and address information for an in-state or out-of-state registered vehicle is not available soon enough to meet the time deadlines for mailing written notice, then the notice shall be mailed as soon as possible after the information is received and any specific times to mail notice shall not apply. If the license plate or vehicle identification number is expired, altered, or missing the Mayor or the Chief shall send any notice required under § 8-5-2-1 et seq. as soon as is reasonably practicable and any specific times to mail notice shall not apply.

(3) In lieu of mailed notice, notice may be given by personal service or in any other reasonable manner, so long as actual notice is given within the time limits provided. Notice may be effected by verbal notice to an owner who is present prior to

or at the time of the towing of his vehicle, or to the driver or passenger of a vehicle, if the driver or passenger reasonably appears to have custody of the vehicle with the owner's knowledge and permission. Such notice shall be valid, however, only if the person so notified is informed in writing of the location of the storage facility where the vehicle will be stored and a phone number where the owner can obtain further information from a municipal employee. When a vehicle owner's address cannot be obtained, the city may publish notice."

SECTION 2. Amending Section 8-5-2-3, ROA 1994 to read:

"§ 8-5-2-3 ABANDONED AND INOPERABLE VEHICLES.

(A) A vehicle is abandoned if:

(1) The vehicle is parked on or along any street, alley or public way and the vehicle displays no current license plate and validating sticker;

~~[- or -]~~[+and+]

(2) The vehicle is left unattended on or along any public property, street, alley or public way in the same place for a period of 36 hours without a valid police sticker as defined in division (B) of this section;

(3) The vehicle is left on private property without the consent of the property owner, tenant, or occupant for a period of 24 hours; or

(4) At a private residence, any vehicle which is not lawfully parked on a driveway for a period of at least 36 hours.

(B) The Chief may issue a sticker temporarily permitting street storage, upon application of any owner or agent of an owner for any vehicle which is operable and has a current license plate. Stickers shall expire 15 days after issuance. No owner, whether an individual, business, corporation, organization, partnership or trust, is entitled to more than four stickers at any time.

(C) Any inoperable vehicle, or any part thereof, left on any public property or on any private property, without the consent of the property owner, tenant or occupant, is a public nuisance. Any abandoned vehicle, or any part thereof, is a public nuisance.

(D) When a vehicle is abandoned or is an inoperable vehicle on or along any public property, a street, alley or public way or is an abandoned or inoperable vehicle on private property without the consent of the property owner, tenant or occupant under

circumstances which do not allow summary removal or relocation pursuant to § 8-5-2-4, a notification tag shall be attached to the vehicle in a manner which is readily visible containing the following information:

(1) The date and time the notification tag was affixed to the vehicle and the nature of the violation;

(2) An order requiring the removal of the abandoned or inoperable vehicle from the location within seven consecutive days of the day the notification tag was affixed to the vehicle;

(3) A statement that, pursuant to this section, the vehicle may be towed and stored at the owner's expense if it is not removed within seven consecutive days of the day the notification tag was affixed to the vehicle;

(4) A statement that the owner has the opportunity to challenge the proposed action at a hearing if a written request is submitted to the City Clerk within seven consecutive days of the day the notification tag was affixed to the vehicle;

(5) A phone number and name or title of a city employee from whom the owner can obtain further information about requesting a hearing; and

(6) The identity of the affixing person.

(E) Written notice containing the same information specified in division (D) of this section plus the location and description of the vehicle shall be mailed by certified class mail to the registered owner of the vehicle within one business day of affixing the notification tag pursuant to division (D) of this section. The identity of the vehicle shall include the license plate number, the vehicle identification number, and the make, type and color of the vehicle. The notice shall also advise the registered owner of the vehicle that if the vehicle is towed and is not claimed by the owner or the owner's authorized agent and/or the amount of any accrued impoundment charges are not paid within 30 days from the date the notification tag was affixed to the vehicle, the vehicle will be sold or otherwise disposed. In the event the vehicle is not registered in New Mexico, or if the license plate or vehicle identification number is expired, altered, or missing, the Mayor or the Chief shall send the notice required in this section as soon as is reasonably practicable and the requirement of this subsection to mail notice within one city business day of affixing the notification tag shall not apply. If the vehicle has already

been towed by the city, the notice shall also state that the vehicle has been taken into custody and stored, the location from which the vehicle was towed, the reason for the impoundment, the location and telephone number of the storage facility where the vehicle is being kept, that daily storage charges will be assessed in addition to a towing charge, and that the owner may obtain release of the vehicle by paying impoundment charges in full pursuant to § 8-5-2-8 or by posting bond pursuant to § 8-5-2-10(E).

(F) Upon timely receipt of a request for a hearing as defined in division (D)(4) of this section, the Mayor shall order a delay of towing the vehicle until after the hearing. The hearing shall be conducted pursuant to § 8-5-2-10.

(G) If no hearing is requested pursuant to division (D)(4) of this section, and the vehicle is not removed within seven consecutive days of the day the notification tag was affixed to the vehicle, the vehicle may be ordered impounded by a municipal police officer or any municipal employee who is authorized to direct traffic or enforce state or local parking or motor vehicle laws. “

SECTION 3. SEVERABILITY CLAUSE. If any Section, paragraph, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

Section 4. COMPILATION. Section 1 of this ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

Section 5. EFFECTIVE DATE. This ordinance shall take effect five days after publication by title and general summary.

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